

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: A64/2025
Gauteng Regional Court Case No.: RC555/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
5 November 2025	
DATE	SIGNATURE

In the matter between:

KATISO JACOTTET MOLEFE

Appellant

and

THE STATE

Respondent

JUDGMENT

WANLESS J

Introduction

[1] In this matter, one Katiso Jacottet Molefe (*"the Appellant"*) has been charged with eight (8) counts, consisting of four (4) counts of murder and four (4) counts of

conspiracy to commit murder. These charges are in respect of the deaths of four (4) deceased.

- [2] The charge sheet, in its present form and insofar as it relates to the Appellant (as accused 4), reads as follows:

2.1 Count 1 - conspiracy to commit murder, in respect of one Oupa John Mmanthoko Sefoka.

2.2 Count 2 - murder, in respect of one Oupa John Mmanthoko Sefoka.

2.3 Count 3 - conspiracy to commit murder, in respect of one Sibusiso Walter Mkoena.

2.4 Count 4 - murder, in respect of one Sibusiso Walter Mkoena.

2.5 Count 5 - conspiracy to commit murder, in respect of one Sandile Shawn Myeza.

2.6 Count 6 - murder, in respect of one Sandile Shawn Myeza.

2.7 Count 12 - conspiracy to commit murder, in respect of one Hector Buthelezi.

2.8 Count 13 – murder, in respect of one Hector Buthelezi.

- [3] The Appellant applied for bail in the Alexandra Regional Court. Bail was refused. The Appellant now appeals to this Court against the decision of the learned Magistrate to refuse the Appellant bail on the 20th of August 2025. This appeal is opposed by the State (*"the Respondent"*).

History

- [4] On the 6th of December 2024 the Appellant was arrested in relation to the murder of one Swart. He was charged, together with the co-accused in the present matter (*"the Alexandra matter"*)¹ of conspiracy to commit murder; murder; possession of stolen property (a motor vehicle); unlawful possession of an AK-47; unlawful possession of two nine millimetre pistols; unlawful possession of

¹ Paragraph [2] *ibid.*

ammunition and unlawful possession of a Renati Gamba pistol. The Appellant was charged with the said offences in the Vereeniging Regional Court (*"the Vereeniging matter"*).

- [5] The Appellant applied for bail in the Vereeniging matter, which was refused by the Vereeniging Regional Court on the 2nd of August 2025. That refusal of bail was taken on appeal to the High Court of South Africa, Gauteng Division, Pretoria, (*"the Pretoria High Court"*). In the Pretoria High Court the Appellant's bail appeal was heard by Ledwaba DJP. On the 27th of June 2025, Ledwaba DJ P made the following order (*"the Ledwaba order"*), namely (*verbatim*):

"1. The learned Magistrate's Order to dismiss Applicant's application for Bail is set aside and is substituted with the order set out hereunder.

2. Applicant Mr Katiso J Molefe is granted Bail in the amount of R100 000.00 (One Hundred Thousand Rands) on the following conditions:

2.1 He should report to the nearest Police Station twice per Week on a Monday and a Thursday.

2.2 He should be in the Province of Gauteng and can only leave Gauteng Province after informing the investigating officer in writing where he would be going and the investigating officer should not object unless there is a valid reason for him/her to object.

2.3 The Applicant should not interfere or communicate with the State Witness mentioned in the Indictment.

2.4 The Applicant should attend Court as Ordered at his last appearance and on dates that the trial will be postponed to.

3. Should Applicant fail to comply with any of the conditions above a warrant for his arrest may be issued and the Bail may be withdrawn by a competent Court."

- [6] Whilst the Ledwaba order was granted on Friday the 27th of June 2025 the Appellant was only released from custody, on bail, on Monday the 30th of June 2025. On Monday the 21st of July 2025 the Appellant was, once again, at his

home, arrested. This arrest was in respect of the Alexandria matter. In the premises, the Appellant had been on bail for a period of exactly three (3) weeks prior to his second arrest. It is common cause that the charges in the Vereeniging matter² will be added to the charges in the Alexandria matter. In this regard, the co-accused are the same in both matters.

The evidence before the lower court

- [7] In the court *a quo* the Appellant elected to place the evidence in support of his application for bail before the Magistrate in the Alexandra Regional Magistrate's Court (*as he did in the Vereeniging matter*) by way of affidavit. In response thereto, the Respondent also declined to lead *viva voce* evidence (which would have been subjected to cross-examination) and filed an answering affidavit, deposed to by one Hlengiwe Mbele ("*Mbele*"), a sergeant in the South African Police Service and who is the investigating officer ("*IO*") in both the Alexandra and Vereeniging matters.
- [8] The Appellant filed a replying affidavit. Thereafter, the Respondent filed a supplementary affidavit, also deposed to by Mbele. It is worthy to note that the Appellant and the Respondent elected to place evidence before the lower courts by way of affidavit in both the Vereeniging and Alexandra matters.

The cases of the Appellant and the Respondent

Appellant's case

- [9] In broad summary, it was submitted, on behalf of the Appellant by Adv Hellens SC (with him Adv DJ Joubert SC), that, *inter alia*, the Appellant had discharged the onus incumbent upon him to prove, on a balance of probabilities, that exceptional circumstances exist for this Court, in the exercise of its discretion and in the interests of justice, to grant the Appellant bail.
- [10] Further, it was submitted, *inter alia*, that not only was the judgment of the court *a quo* incorrect but that the Respondent's opposition to the Appellant being granted bail was speculative and not based on any real evidence. Also, it was submitted

² Paragraph [4] *ibid*.

that the judgment of Ledwaba DJP, giving rise to the Ledwaba order whereby the Appellant was granted bail in the Vereeniging matter, supported the granting of bail to the Appellant in the Alexandra matter.

Respondent's case

- [11] On behalf of the Respondent, Adv Le Roux submitted, *inter alia*, that this Court should consider the circumstantial evidence placed before this Court as a whole when deciding whether or not to grant the Appellant bail. In addition thereto, it was submitted that the circumstances have changed since the Appellant had been granted bail in the Vereeniging matter in that the Appellant now faced charges of conspiracy to murder and murder in respect of the death of five (5) deceased.
- [12] It was further submitted that not only was the Appellant a flight risk but that the charges facing the Appellant were extremely serious. In the premises, it was submitted, on behalf of the Respondent, that the Appellant had failed to discharge the onus incumbent upon him to prove, on a balance of probabilities, that exceptional circumstances exist and that it would be in the interests of justice for him to be released on bail. Under the circumstances, the Respondent submitted that the Appellant's appeal should be dismissed.

The law

- [13] It is common cause in this matter that the Appellant's appeal against the decision of the court *a quo* to refuse his application for bail is governed, *inter alia*, by the provisions of section 65 of the Criminal Procedure Act 51 of 1977 (*"the Act"*). This section of the Act deals with appeals to a superior court with regard to bail and states that:

"(1)(a) An accused who considers himself aggrieved by the refusal of a lower court to admit him to bail or by the imposition of such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.

[b] *The appeal may be heard by a single judge.*

[c]

[2]

[3]

[4] *The court or judge hearing the appeal shall not, set aside the decision against which the appeal is brought, unless, such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.*³

[14] The foregoing must be read with subsection 60(4) of the Act, which reads as follows:

"[4] The interests of justice do not permit the release from detention of an accused, where one or more of the following grounds are established –

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person, or will commit a Schedule 1 offence; or

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system; or

³ *Emphasis added.*

(e) where, in exceptional circumstances, there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security. “

- [15] It is also a common cause that, in light of the offences with which the Appellant has been charged, subsection 60(11)(a) of the Act applies. This subsection states:

“(11) Notwithstanding, any provision of this Act, where an accused is charged with an offence –

[a] referred to in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which, in the interests of justice, permit his or her release.”⁴

- [16] With regard to the provisions of subsection 65(4) of the Act, it was submitted by Adv Hellens SC and conceded (*correctly in the opinion of this Court*) by Adv Le Roux, that apart from any discretion vested in this Court to decide the Appellant's application for bail “*afresh*”, this Court is clearly entitled to do so when the court *a quo* misdirected itself materially on the facts or legal principles.⁵

- [17] In the matter of *S v Dlamini and Others*⁶, a decision of the Constitutional Court, when dealing with subsection 60(11)(a) of the Act, it was held⁷, that:

“In requiring that the circumstances proved must be exceptional, this subsection does not say that they must be circumstances above and beyond and generally different from those enumerated in subsections (4) to (9).⁸

- [18] In the premises, (*and this was common cause*), in order for the Appellant to satisfy this Court that he has discharged the onus incumbent upon him in terms

⁴ *Emphasis added.*

⁵ *Du Toit: Commentary on the Criminal Procedure Act (“Du Toit”) at 9-100A; S v Mdhuli 2020 (1) SACR 98 (LP), at [37] – [39]; S v Essop 2018 (1) SACR 99 (GP) at [34] – [35]; S v Mpulampula 2007 (2) SACR 133 (E) at 136e; S v Jacobs 2011 (1) SACR 490 (ECP) at [18].*

⁶ 1999 (2) SACR 51 (CC).

⁷ at paragraph [76].

⁸ *Emphasis added.*

of subsection 60(11)(a) of the Act, it is necessary for him to place evidence before this Court in order to deal with the provisions of subsections 60(4)(a) to (e) of the Act.

[19] The Constitution of the Republic of South Africa, 1996 (*“the Constitution”*), is the supreme law applicable confirming the principle of *“the Rule of Law”* in that the preamble states that *“every citizen is equally protected by law”*. Subsection (2)(a) of the Constitution, guarantees the right to freedom and not to be deprived of freedom without just cause.

[20] Further, in the matter of *S v Mohammed*⁹, it was held¹⁰ that:

“The phrase, exceptional circumstances, does not stand alone: the schedule six applicant has to adduce evidence which satisfies the court that such circumstances exist, which, in the interests of justice permit his or her release. The proven circumstances have to be weighed in the interests of justice. So the true inquiry, seems to me, is whether the proven circumstances are sufficiently unusual or different in any particular case as to warrant the applicant’s release. And “sufficiently” will vary from case to case. It may be that this approach adds to the element of judicial discretion which is already inherently present in section 60(11)(a).¹¹

[21] Also, in the matter of *S v Vanqa*¹² the court emphasized the fact that, *“Circumstances of an ordinary nature to bail applications can, in the context of a particular case, be exceptional or unusual.”*

[22] In *Dlamini (supra)*¹³ it was also held that:

“Section 60(11)(a) does not contain an outright ban on bail, in relation to certain offences that leaves the particular circumstances of each case to be considered by the presiding officer. The ability to consider the circumstances of each case affords flexibility that diminishes the overall impact of the provision. What is of importance is that the grant or refusal of bail is under judicial control, and judicial

⁹ 1999 (2) SACR 507 (C).

¹⁰ at 515c.

¹¹ *Emphasis added.*

¹² 2000 (2) SACR 371 (TK).

¹³ At paragraph [74].

officers have the ultimate decision as to whether or not, in the circumstances of the particular case, bail should be granted."

- [23] An extremely useful and informative decision is that of *S v Siwela*¹⁴ where the court stated the following, namely:¹⁵

*"On the strength of the onus which the amending provisions have cast on the Appellant, the magistrate simply adopted the attitude that because the Appellant had shown no exceptional circumstances, bail should be refused. The magistrate did not say what such exceptional circumstances might be. I do not believe that it could have been the intention of the Legislature, when it enacted the amending provisions of section 60(11) of the Act, to legitimize the random incarceration of persons who are suspected of having committed Schedule six offences, who, after all, must be regarded as innocent until proven guilty in a court of law."*¹⁶

- [24] It was further held in *Siwela*¹⁷ that:

*"Moreover, if the State was serious in its opposition to the granting of bail, it had to lead rebutting evidence - at least to place in dispute the uncontested evidence of the accused, that he had not committed the offence with which he was charged. Placing in dispute, in this sense, postulated a genuine dispute: mere accusations were not enough. The word, "satisfied" presupposed that the accused would discharge the onus imposed by section 60(11)(a) on a balance of probabilities. It was intolerable for the State to adopt a purely passive role in the confident expectation that the accused would not succeed in discharging that onus."*¹⁸

- [25] Finally, in the fairly recent decision of *S v Lonzi*,¹⁹ it was held:²⁰

"A court determining a bail application affected by s 60(11) is required to consider the conspectus of evidence and decide whether it is sufficient to persuade the

¹⁴ 1999 (2) SACR 685 (WLD).

¹⁵ [2005] 1 SACR 704 (SCA).

¹⁶ *Emphasis added.*

¹⁷ At 686 F-G.

¹⁸ *Emphasis added.*

¹⁹ 2021 JDR 3277 (WCC).

²⁰ At paragraph [5].

court that an exception should be made to the default situation, which is that an accused person detained for trial on a Schedule 6 offence would remain in custody pending the outcome of the criminal proceedings. This involves the court in having to make a valued judgment."²¹

Discussion

[26] To enable this Court to properly decide whether or not the Appellant has shown, on a balance of probabilities, that exceptional circumstances exist, which obliges this Court, in the exercise of its discretion and in the interests of justice, to set aside the decision of the Alexandra Regional Court and grant the Appellant bail, it is necessary for this Court to consider, *inter alia*, the following:

26.1 subsections 60(4)(a) to (e) read with subsections 60(5) to (9) of the Act;

26.2 the judgment of the lower court; and

26.3 the judgment and order of Ledwaba DJP in respect of the Vereeniging matter.

Subsections 60(4)(a) to (e) read with subsections 60(5) to (9) of the Act.

[27] It has already been dealt with earlier in this judgment that "*the interests of justice do not permit the release from detention of an accused*" where one or more of the grounds, as set out in subsections 60(4)(a) to (e) in the Act, are established.²² Each of the said grounds are amplified by the provisions of subsections 60(5) to (9) of the Act. This judgment will not be burdened unnecessarily by setting out the provisions of these latter subsections of the Act. Rather, this court will deal with those subsections of the Act and the provisions thereof which are applicable in the present matter (*and which form the basis of the respective arguments placed before this court*) herein.

²¹ *Emphasis added.*

²² *Paragraph [14] ibid.*

Subsection 60(4)(a) read with subsection 60(5) of the Act.

- [28] Whilst it was (*correctly*) conceded by the Appellant's Counsel that the matter before Court relates to, on the evidence alleged and disclosed by the Respondent, planned executions of assassinations involving the use of multiple firearms, it was submitted that it must be taken into consideration that no allegation is made by the Respondent that the Appellant was physically involved in the execution of violence against any of the deceased persons. It was further submitted that even though the Appellant has a previous conviction in the United Kingdom (*some 20 years ago*), no disposition to violence has been demonstrated by the Appellant, at any stage, during his lifetime. The previous conviction in the United Kingdom also cannot be described as "*a disposition*" to commit offences referred to in Schedule 1 or any other offences as listed in subsection 60(5)(e) of the Act. Therefore, it was submitted that this Court should find that the Appellant, on a balance of probabilities, had demonstrated that there is no likelihood that the safety of any specific individual, or the public at large, would be infringed upon by him should he be released on bail. In the premises, it was submitted that the onus upon the Appellant had been satisfied in respect of the provisions of subsection 60(4)(a) of the Act.

Subsection 60(4)(b) read with subsection 60(6) of the Act.

- [29] The factors to be considered in terms of subsection 60(6) of the Act relate primarily to the important issue as to whether the Appellant can be considered a flight risk.
- [30] It cannot be seriously disputed that the Appellant has emotional, family, community and occupational business ties. He also has assets in Gauteng where he is to be tried and in the Republic of South Africa in general. This alone, it was submitted, makes the probability of the Appellant absconding, extremely remote.
- [31] In response to the Respondent's argument that the Appellant travelled extensively overseas, it was submitted, on behalf of the Appellant, that since the incident approximately 20 years ago, where he had travelled to the UK using a false Lesotho passport, he had always travelled lawfully. Furthermore, his valid South African passport was already in the possession of the IO.

- [32] It was further submitted, on behalf of the Appellant, that this Court could set bail in a meaningful amount with proper conditions relating to restricting the Appellant to the provinces of Gauteng and the Free State, together with restricted hours when he may be away from his residence in Sandhurst for business purposes.
- [33] With regard to what was probably the main ground of the Respondent's opposition to the Appellant being granted bail, namely the nature and the gravity of the charges with which the Appellant is to be tried (*subsection 60(6)(f) of the Act*), together with the strength of the case against the Appellant and the incentive that he may, in consequence, have to attempt to evade his trial (*subsection 60(6)(g) of the Act*) the submission made on behalf of the Appellant is that the Respondent's entire case is based on circumstantial evidence and the allegations of a common intent between the parties allegedly involved. This, it is submitted, in law, poses substantial challenges to the Respondent in proving its case against the Appellant.
- [34] In light of the foregoing, it was submitted by Counsel for the Appellant that the Respondent's case against the Appellant is, at best, speculative and does not support a case that, if granted bail, the Appellant will abscond.
- [35] It was once again submitted that proper bail conditions could be imposed in conjunction with a proper bail amount which would address any concerns relating to the factors raised in subsection 60(4)(b) of the Act. Respondent's Counsel, in response thereto, submitted that no bail conditions could exist to prevent the Appellant, if he so wished, leaving the Republic of South Africa to avoid standing his trial.

Subsection 60(4)(c) read with subsection 60(7) of the Act.

- [36] It was correctly submitted on behalf of the Appellant that, on the facts of this matter, there is no indication that the Appellant has any relationship with any of the witnesses involved and neither has he any access to evidentiary material to be presented at the trial, as this is already in possession of the investigating team. There is also no indication of any evidentiary material outstanding, which could be concealed or destroyed by the Appellant.

[37] The Appellant also relied on the fact that, during the period from when the first murders were committed, during 2022, to the date of his first arrest on 6 December 2024, not only had he had the opportunity to flee from justice but also to interfere in the investigation, should he have been so inclined. He did not do so and has also complied with all of his bail conditions since his release on bail on 30 June 2025 in the Vereeniging matter.

Subsection 60(4)(d) read with subsection 60(8) of the Act.

[38] Appellant's Counsel submitted that the Appellant is clearly a well-known figure within the business community. As such, his identity and profile are well-known to the South African Police Service and investigating team. It is not alleged by the Respondent that during the course of the investigations the Appellant supplied false information to the investigating team or to the court. He has no history of failing to comply with bail conditions and there are no indications that he will not comply with bail conditions. This has been demonstrated by the Appellant since 30 June 2025, when he was released on bail by the Pretoria High Court in the Vereeniging matter.

[39] It was therefore submitted that the Appellant had satisfied the onus upon him to prove, on a balance of probabilities, that there is no likelihood of him infringing upon the interests of justice or the bail system, in relation to the factors as set out in subsection 60(8) of the Act.

Subsection 60(4)(e) read with subsection 60(8)(A) of the Act

[40] Whilst it was (*correctly*), conceded on behalf of the Appellant that the nature of the alleged offences committed would induce a sense of shock and outrage in any law-abiding citizen of the Republic of South Africa, it was submitted that it remains for the trial court, during a fair trial process, to decide whether the Appellant is to be blamed for the violent death of the deceased persons. Arising therefrom, it was further submitted that this issue is also well understood by members of the South African public.

[41] It was furthermore pointed out by the Appellant's Counsel that this matter, although it received high-profile publicity in the media, was not of such a nature

that it led to any unrest in the community where it was perpetrated. According to Counsel for the Appellant the matter has also been dealt with in a very responsible manner by the courts and the Respondent. Therefore, there is no likelihood that the release of the Appellant on bail would undermine or jeopardize the public confidence in the criminal justice system. Once again, it was pointed out that the Appellant was released on bail by the High Court in Pretoria on 27 June 2025.

Subsection 60(9) of the Act which refers generally to the factors as set out in subsection 60(4) of the Act.

- [42] This Court, when considering the factors as set out in subsections 60(4)(a) to (e) of the Act, is required by the legislature to weigh the interests of justice, as referred to in subsection 60(4) of the Act against the Appellant's right to personal freedom in terms of both the Constitution and the Act. Subsection 60(9) of the Act states, *inter alia*, that a court should weigh the factors as set out in subsection 60(4) against *"the right of an accused to his or her personal freedom and, in particular, the prejudice he or she is likely to suffer if he or she were to be detained in custody."*
- [43] It must be accepted from the affidavits filed in this bail application that the Appellant presently conducts business relating to a fairly substantial development in Welkom in the Free State. Following thereon, it stands to reason that incarceration of the Appellant will substantially affect his business activities.
- [44] It is further submitted on behalf of the Appellant and not denied by the Respondent that this matter, involving as it does, multiple accused, may also take a substantial period of time to conclude. This issue is, therefore, *"open ended"*. The length of the (*consolidated*) trial is unknown.
- [45] It was submitted that whereas the Appellant has succeeded in demonstrating to this Court that the factors listed in subsections 60(4)(a) to (e) of the Act are not present, any likelihood relating to his application to be released on bail pending trial, combined with the fact that he would suffer substantial prejudice should he be incarcerated pending his trial, constitutes exceptional circumstances viewed in conjunction with his personal profile. On that basis, it was submitted by Adv

Hellens SC that this Court should find that the Appellant should be released on bail pending his trial in order to avoid excessive prejudice to the Appellant as demonstrated by the considerations enumerated in subsection 60(9) of the Act.

The judgment of the lower court

- [46] During the course of argument before this Court, Counsel for the Appellant attacked the judgment of the learned Magistrate in the Alexandra Regional Court in detail. The Notice of Appeal also sets out, in full, the errors allegedly made by the Court *a quo*. It was submitted, on behalf of the Appellant, that the said errors were fundamental in the reasoning of the lower court when refusing to grant the Appellant bail. These alleged errors are set out hereunder.

The lower court erred in finding that the Appellant had failed to discharge the onus to prove, on a balance of probabilities, that there were exceptional circumstances which, in the interests of justice, permitted the Appellant's release on bail.

- [47] It was submitted by Adv Hellens SC. that the Court *a quo* did not take into account, *alternatively*, did not adequately take into account, the fact that the Appellant, with exactly the same personal and overall circumstances, had been granted bail, on appeal, in the Pretoria High Court some three (3) weeks before he was re-arrested on the further charges of historical events which had taken place long before his first arrest.
- [48] In the premises, it was submitted that the lower court should have found that with all the personal circumstances of the Appellant unchanged and with the Appellant being arrested, at home, only three, (3) weeks after he was released on bail, together with the fact that the Appellant was charged with pre-meditated murder for which one would face, if convicted, a sentence of life imprisonment, the Appellant had nevertheless not evaded justice. He had not breached his bail conditions and had not become a flight risk. Rather, it was submitted that the Appellant had demonstrated that he was not a flight risk and would stand his trial. After all (it was submitted) that is what being released on bail is all about in the justice system.

- [49] Arising from the foregoing, it was submitted by the Appellant's Counsel that the lower court should have taken into account that the Appellant had demonstrated that, while facing the possibility of a conviction in the Vereeniging matter, which conviction would possibly lead to a sentence of life imprisonment, the Appellant would not be more likely to flee in the face of possible further life sentences. A life sentence is a sentence for life and one cannot serve more than one life sentence. Hence, it was submitted that there was no added incentive to flee as the Court *a quo* incorrectly found.

The court a quo should have found that the apparent conflict in the Respondent's case as to whether the Appellant was the middleman or the client in these alleged contract killings, demonstrated the inherent weakness in the Respondent's case against the Appellant.

- [50] Counsel for the Appellant submitted that the lower court should have found that it was not possible to be both a middleman and the client in a contract killing and that the Respondent's case was eternally inconsistent and extremely speculative, relying only on inferences. Instead, the lower court found that the Respondent's case showed that the Appellant fell into the "middleman" category.

The lower court should not have found it to be of any significance that the Appellant had a 20 year old previous drug related conviction in the United Kingdom for the possession of cannabis the import of which is prohibited in the United Kingdom.

- [51] It was submitted by Adv Hellens SC that the lower court erred in finding that the Appellant has a fraud conviction relating to his stay in the United Kingdom. It was common cause before this Court that there is no such fraud conviction. This was, in the premises, a clear error and an error made by the Court *a quo* which weighed with the Magistrate because he found it to be significant. This error was in addition to the Court *a quo* placing emphasis on a 20 year old drug conviction in the United Kingdom.

The lower court erred in finding that it was “really concerning” that the Appellant had used a false Lesotho passport in relation to the offence of importing cannabis into the United Kingdom.

- [52] It was once again pointed out by Appellant's Counsel that this issue took place some 20 years ago. There was no indication subsequent to that, for 20 years, that the Appellant had ever used a false passport. The Appellant has always travelled with a passport in his own name. The false identity in the Lesotho passport was used in relation to an offence committed 20 years ago. More importantly, it was submitted that the issue of a false passport would only be relevant if the Appellant had shown an inclination to evade justice. He had not attempted to evade justice or become a fugitive from justice and therefore the historical false passport issue is and should have been (*so it was argued*), found to be irrelevant. Also, the Pretoria High Court correctly found this to be irrelevant when it granted the Appellant bail, on appeal, in the Vereeniging matter.

The lower court should not have found, as it did, that the Appellant was a member of a “so-called syndicate”.

- [53] It was submitted, on behalf of the Appellant, that there was insufficient evidence, in fact no evidence of any weight whatsoever, that indicated that the Appellant was a member of a syndicate such as the court *a quo* found to have existed. In the premises, it was submitted that the lower court was clearly wrong in this regard and misdirected itself.

The court a quo erred in finding that there was any significance to the fact that amounts of cash were paid into the Appellant's companies' bank accounts.

- [54] The attention of this Court was drawn to the fact that the Appellant had provided an explanation that those companies earned monies, which, from time to time, were cash amounts. It was submitted that the companies of which the Appellant was the shareholder, and/or, “controller”, were businesses and businesses, in the normal course, received deposits, even in cash. Following thereon, it was submitted that there was nothing extraordinary in this regard.

[55] On behalf of the Appellant, it was further submitted that the lower court should have been more inclined to find that it is highly unlikely that someone operating illegally and receiving cash payments for such illegal activities, would make cash deposits into bank accounts, which are easily traceable by anyone having access to the bank accounts, such as the South African Police Service would and did in fact have.

[56] What the court *a quo* should have found was that the Respondent had no basis to suggest that the sources of the cash deposits were “*unidentified sources*” and the lower court should therefore not have found that “*there are risks that go together with that*”. Indeed, submitted Counsel for the Appellant, what those deposits would have to do with being a flight risk or not deserving of bail, as the High Court in Pretoria had already found, does not, (*it was submitted*) bear any scrutiny.

The lower court erred in finding that it had been shown that the Appellant played a role in the killings.

[57] It was submitted that no such averments were sustainably made by the Respondent. On behalf of the Appellant, it was submitted that the lower court should have found that telephone or WhatsApp messages referring to “K” or “KT” or “Phafa” had not been shown to be a reference to the Appellant. The court *a quo* should have found that this was mere speculation and that a proper and reasonable explanation therefore had been provided by the Appellant in his Replying Affidavit.

[58] Further in this regard, it was submitted that the lower court should have found that the Appellant had established an overwhelming probability that the Respondent would be unable to show that he, by means of the incorrect inferences drawn from telephone or WhatsApp messages, was the “K” or “KT” or “Phafa” that the Respondent believed him to be.

The court a quo should have found that the Respondent was drawing inferences from speculation and that the speculation was merely that.

[59] Adv Hellens SC submitted that the speculation consisted of unsustainable conclusions from which further unsustainable conclusions and inferences were wrongly drawn. The lower court should have found that the Appellant had demonstrated that the Respondent's case was so weak that he had demonstrated that there was no possibility of a conviction. Indeed, counsel for the Appellant submitted that there was a probability of an acquittal.

[60] Following on from the foregoing, it was submitted that the lower court should have found that, although bail applications are not trials and are unique in nature and that the admissibility of evidence requirements is less stringent the Respondent's evidence, admitted in terms of a less stringent admissibility "environment", did not sustain the conclusions which the Respondent tried to reach from the speculation in which it had indulged.

The lower court should not have found that it was "quite apparent that the gunmen were awaiting payment from the applicant for the hits performed".

[61] In this regard it was submitted, on behalf of the Appellant, that the court a quo should have found that there was simply no evidence that the Appellant had engaged anyone to perform any "hits" on the version postulated by the Respondent. It was further submitted that if the Respondent possessed any convincing and conclusive evidence, it would have produced same and not relied upon speculative and misplaced inferences as its only evidence against the Appellant.

The lower court should not have found it to have been significant that the cellphones of accused 1 and 2 were picked up at a cellphone tower near the Appellant's home on 24 November 2024.

[62] It is common cause that the Appellant's home is in the suburb of Sandhurst. This is an exclusive suburb centrally situated in Sandton, and very close to the Sandton CBD. It was submitted on behalf of the Appellant that there are many people whose cell phones would, from time to time, be located in the central

Sandton area. In the premises, it was submitted that the court *a quo* should have found that the cellphone tower in question was not exclusive or directly connected to the *Appellant's* home.

The court a quo should not have found that there was any connection between the Appellant and accused 1, 2 and 3 depositing cash into their bank accounts.

- [63] It was submitted that there was no reliable evidence presented by the Respondent which justified such a finding and the lower court clearly misdirected itself when making this finding.

The lower court should not have found that anyone whose address is in Roodepoort, Johannesburg, or in Atteridgeville, Pretoria, would never legitimately and not in connection with any legal activities, find themselves in the central Sandton area.

- [64] In this regard, it was pointed out that in the court *a quo* it was uncontested and therefore common cause, that accused 1 was an old acquaintance, even a friend of the Appellant. It should have been found to have been insignificant that accused 1 would, on any number of occasions, even on the day or night at which he allegedly committed a crime, be contacting or attempting to contact the Appellant.

The lower court should not have drawn the inference that cash deposits into the bank accounts of the other accused were made by the Appellant.

- [65] Appellant's Counsel requested this Court to note that the Respondent attempts to connect deposits into the Appellant's account with being of a dubious nature and as payment from a client for various murders. However, the Respondent does not correlate payments into the Appellant's bank accounts with any withdrawal of cash from the Appellant's bank accounts. Absent such correlation, no inference can justifiably be drawn that the cash deposits into the Appellant's business accounts were in relation to the murders or that the cash amounts paid to the other accused emanated from the Appellant. In the premises, it was submitted on behalf of the Appellant that there was no evidence presented by

the Respondent to justify the court *a quo* making such a finding and the lower court was clearly wrong in doing so.

The lower court should not have found that the Appellant made several assurances regarding the bail application of accused 1 in the Vereeniging matter.

- [66] As pointed out by Counsel for the Appellant, this assurance was in fact from his girlfriend or “wife”, which was sent to him. It was further submitted that it should have been found to be unremarkable that the Appellant was interested in the fate of a friend’s bail application. In finding that, on 2 August 2024 the Appellant sent a WhatsApp message relating to the bail application of accused 1, it was submitted on behalf of the Appellant that the lower court did not take into account the evidence of the Appellant that he does not use “emoji’s” and that if an emoji appeared on his cellphone, it would have been something that was sent to him and then forwarded by him again.

The court a quo should not have found that since the High Court in Pretoria granted bail in the Vereeniging matter that “a lot has changed since then”.

- [67] As set out earlier, it was the Appellant’s submission that the lower court should have found that the Vereeniging matter involves an allegation of premeditated murder. This, in all likelihood, would be followed, if successful, with a life sentence. There are no objective facts that justify the finding as set out above by the court *a quo*. Nothing, it was submitted, had changed. In fact, the Appellant had demonstrated that he is not a flight risk and that he would stand trial and not undermine the bail or justice system.
- [68] Further, it was submitted that the lower court should have found that not having absconded once released on bail in the Vereeniging matter, it was very unlikely that further alleged charges, of alleged historical incidents, just as serious in nature, would cause the Appellant to abscond.

The lower court should not have found it to be important that “the evidential link between the four accused in the case appears to have increased”.

[69] Adv Hellens SC submitted that this “*evidential link*” is the speculation of the IO and relies solely upon incorrect inferences from unsustainably strong speculation. Therefore, he submitted that the “*evidential link*” has not been established.

[70] It was submitted that not only had the adding of further charges not strengthened, in any way, the Respondent’s case against the Appellant but that these additional charges had not increased the Appellant’s desire to evade justice. This was so, it was submitted, since during a period of three (3) weeks following the Appellant having been granted bail by the High Court in Pretoria, he had done nothing to attempt to evade his trial and had complied fully with his bail conditions.

The lower court should not have found, as there was no evidence before the court a quo to this effect, that the Appellant had a circle of influence and capabilities.

[71] In the light of the failure of the Respondent to place any evidence whatsoever in relation to the Appellant’s alleged circle of influence and capabilities before the lower court, it was submitted, on behalf of the Appellant, that the Magistrate had erred in making the finding that he did.

The judgment and order of Ledwaba DJP in respect of the Vereeniging matter.

[72] At the outset, it is important to note that the Appellant’s reliance upon the judgment and order of the Pretoria High Court, when it granted the Appellant bail on certain conditions in the Vereeniging matter, was not on the basis that this Court was bound thereby. That reliance was purely on a factual basis and that the findings made by Ledwaba DJP therein were not only correct but “*underpinned*” the case for the Appellant in the present matter that the Appellant had, on a balance of probabilities, proven exceptional circumstances to exist and that it would be in the interests of justice if he were, once again, granted bail.

- [73] Apart from a brief reference in the *Respondent's Answering Affidavit* to the fact that the investigating team in the Vereeniging matter has submitted a letter of "*complaint*" to the Director of Public Prosecution to consider an appeal by the Respondent, it is common cause that no steps have been taken by the Respondent, to date, to appeal against the judgment and order of Ledwaba DJP. In addition thereto and before this court, Adv Le Roux did not seek to criticize the said judgment and order in any material respect. Rather, as stated earlier in this judgment, it was contended by the Respondent that following the Pretoria High Court granting the Appellant bail, there had been a change in circumstances, resulting in the Appellant failing to discharge the onus incumbent upon him and it not being in the interests of justice for him, once again, to be granted bail.
- [74] Upon a thorough perusal of the judgment of my brother Ledwaba DJP, it is clearly apparent that certain grounds of opposition put forward by the Respondent when opposing the granting of bail to the Appellant in the Vereeniging matter, no longer formed part of the opposition to bail in the Alexandra matter. However, there are certain important duplications. There are also duplications in respect of grounds relied upon by the Appellant in the present bail appeal.
- [75] The first "*duplication*" which is worthy of note, is that in both the Vereeniging and Alexandra matters the Appellant elected to lead evidence by way of affidavit and not by *viva voce* evidence. In this regard, Ledwaba DJP, citing the matter of *S v Mathebula*²³ noted that, whilst the Act provides that with regard to bail applications the Appellant and the Respondent can elect to present oral evidence or evidence on affidavit, it was held in *Mathebula* that oral evidence, tested by cross-examination, is more persuasive than evidence set out by way of affidavit.
- [76] During the course of argument before this Court in the present matter, Adv Le Roux criticized the Appellant for making the aforementioned election. In the opinion of this Court that criticism is unfounded. It is fairly trite that even if one of the parties elects to place evidence before a court by way of affidavit, this does not mean that the other party must follow suit. Hence, despite the election made by the Appellant the Respondent could have elected to lead the *viva voce*

²³ 2010 (1) SACR 55 (SCA).

evidence of the IO, together with that of any other relevant witnesses. Despite the vehement criticism of the Respondent's opposition by the Appellant on the basis that he said opposition was highly speculative in nature the Respondent avoided leading the *viva voce* evidence in its opposition to the application by the Appellant for bail thereby also avoiding the potential perils of cross-examination. Thus, it does not benefit the Respondent to criticize the Appellant's election to place evidence before the lower court by way of affidavit.

[77] Further in this regard, it was noted by Ledwaba DJP that the learned Judge was "*mindful*" of the fact that "*the onus is on the applicant to show, on a balance of probabilities that there are exceptional circumstances, justifying that it would be in the interests of justice that bail should be granted.*" Ledwaba DJP held that the Appellant had discharged the onus incumbent upon him and granted the Appellant bail. It must therefore be accepted that the election made by the Appellant to lead evidence by way of affidavit was not a bar to the Pretoria High Court finding that it was in the interests of justice that the Appellant be released on bail. In the opinion of this Court, in light of that stated above, the election by the Appellant to, once again, lead evidence by way of affidavit, should not weigh against him when this Court decides whether the Appellant has discharged the onus which rests upon him.

[78] As briefly mentioned earlier in this judgment, Ledwaba DJP held that the finding of the Magistrate in the Vereeniging matter that the Appellant had a previous conviction in the UK approximately 20 years ago and that he had utilized a false passport in the commission of that offence, were reasons to regard the Appellant as a flight risk, was a material misdirection on behalf of the lower court. The Appellant submits, relying on the decision of Ledwaba DJP, that the learned Magistrate in the Alexandra matter is likewise guilty of a material misdirection.

Conclusion

Subsections 60(4)(a) to (e) read with subsections 60(5) to (9) of the Act. ²⁴

- [79] After careful consideration, this Court accepts the submissions made on behalf of the Appellant and which negate a finding that the grounds as set out in the abovementioned subsections of the Act have been established. In addition thereto, this Court makes the further findings, as set out hereunder.
- [80] As mentioned earlier in this judgment, the Respondent relied upon the alleged facts in support of a scenario where the Appellant was in cellphone contact with his co-accused, as a ground of opposition to the Appellant being granted bail. During the course of argument before this Court, it was established, by way of reference to the various affidavits and annexes thereto, that the vast majority (*"if not all"*) of the references relied upon by the Respondent to "*K*"; "*KT*" and "*Phafa*", were made during the course of communications between the Appellant's co-accused. The said references did not come to light when examining the communications between the Appellant and those co-accused.
- [81] In support of the Respondent's, ground of opposition to the Appellant being granted bail on the basis that he is a flight risk, it was averred by the IO that the Respondent, through his attorneys, had attempted to obtain his passport from the IO who is in possession thereof. In response thereto, it was averred by the Appellant that the *Respondent* had confused this communication with the communication between his attorney and the IO. In this regard, the Appellant stated that his attorney had simply inquired from the IO as to whether she was indeed in possession thereof since there was some confusion in that regard (*Appellant's passport having been given to the IO by the Appellant's wife or girlfriend*). This was confirmed, under oath, by the Appellant's attorney who deposed to a confirmatory affidavit. In the premises, this Court accepts that, on a balance of probabilities, the Appellant did not attempt to gain possession of his passport to evade his trial.

²⁴ Paragraphs [27] to [45] *ibid.*

[82] Also in the affidavits before this Court the Appellant relied upon the fact that his preparation for trial, (*as was his preparation in respect of his attempts to be granted bail*), would be severely hampered should he remain in custody. This was due, *inter alia*, to the conditions of the facility where he is being detained. These facts were not seriously challenged by the Respondent. In light thereof, together with the fact that the Appellant now faces no less than a total of five (5) counts of conspiracy to murder and pre-meditated murder, this Court finds that the Appellant would be severely prejudiced in his preparation for trial should he remain in custody. Of course, this is not a dominant factor but merely one of the many factors this Court must consider when deciding whether to grant bail.²⁵

[83] The Respondent relied on the fact that “*there was a huge outcry on the social media against the Applicant’s (Appellant’s), release on bail, recently.*” It can only be presumed that, in this respect, the *Respondent* placed reliance on subsection 60(4)(e) read with subsections 60(8A)(a), (b) and (e).

[84] Subsection 60(8A) of the Act reads as follows:

“(8A) *In considering whether the ground in subsection (4)(e) has been established, the court may, where applicable, take into account the following factors, namely –*

(a) *Whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;*

(b) *Whether the shock or outrage of the community might lead to public disorder if the accused is released;*

(c)

(d)

(e) *Whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system:*

²⁵ Subsection 60(9)(e) of the Act.

(f)

- [85] Arising from the foregoing, it is incumbent upon this Court to consider the said factors as set out in the Act. These factors should be considered in the context of the Appellant's constitutional right to freedom and the non-penal character of bail.
- [86] With regard to the provisions of subsection 60(8A)(a) of the Act it has already been noted in this judgment that the nature of the alleged offences (*conspiracy to murder and premeditated murder*) and the alleged circumstances under which the offences were committed (*assassinations by hire*) are, without doubt, heinous and would undoubtedly (*and correctly*) induce a sense of shock or outrage in the community where these offences were committed. However, this factor, without in any manner whatsoever diminishing the importance thereof, must inevitably be considered amongst the myriad of factors to be taken into consideration when this Court decides the granting or denial of bail. The provisions of this subsection of the Act must also encompass the further consideration as to whether, in terms of subsection 60(8A)(e) the release of the Appellant on bail would "*undermine or jeopardize the public confidence in the criminal justice system*".
- [87] The primary purpose of denying an accused bail pending trial is to ensure that an accused stands trial. It is not to punish that accused. Neither should the refusal of bail be seen as a method of deterring potential offenders from committing the same crime. Rather, the manner in which a court should approach an application for bail by an accused person is to grant bail wherever possible.²⁶
- [88] As to whether the release of an accused would "*undermine or jeopardize the public confidence in the criminal justice system*" the Constitutional Court, in *Dlamini (supra)*, in relation to subsections 60(4)(e) and (8A) of the Act, stated the following:²⁷

"It is important to note that the sub-s(4)(e) expressly postulates that it is to come into play only "in exceptional circumstances." This is a clear pointer that this unusual category of factors is to be taken into account, only in those rare cases

²⁶ *S v Visser* 1975 (2) SA 342 (CPE) at 342G-343A.

²⁷ At Paragraph [57].

where it is really justified. What is more, sub-s(4)(e) also expressly stipulates that a finding of such exceptional circumstances has to be established on a preponderance of probabilities, (“likelihood”). Lastly, once the existence of such circumstances has been established, para (e) must still be weighed against the considerations enumerated in sub-s(9) before a decision to refuse bail can be taken. Having regard to these jurisdictional prerequisites, the field of application for sub-ss(4)(e) and (8A) will be extremely limited. Judicial officers will therefore rely on this ground with great circumspection in the knowledge that the Constitution protects the liberty interests of all. Incorrect application of the criteria listed in sub-s(4) by elevating one of them unduly, is a matter for the criminal justice system to remedy. It must do so by applying s60(4)-(9) in the balanced manner prescribed and in accord with “the spirit, purport and objects of the Bill of Rights”. The limitation of the right is therefore as narrowly tailored as possible to achieve the compelling interests in maintaining public peace, and meets the requirement of proportionality between this purpose and the nature of the right.”²⁸

[89] This Court aligns itself with earlier jurisprudence in terms of which, *inter alia*, the public’s often misguided perception of the purpose and effect of bail (*often regarding bail to have a penal character*) must never be given precedence over the duty of a court to properly apply the facts and relevant principles in a particular matter. In this manner, our courts not only ensure that the rule of law prevails but that the principles, as enshrined in our Constitution, are jealously guarded and protected.²⁹

[90] In the present matter, despite the serious nature of the alleged offences, there is no objective evidence before this Court to show that, should the Appellant be granted bail, this would be in conflict with the provisions of the Act, as set out above.

[91] Regarding the judgment of the lower court, this court accepts the submissions made on behalf of the Appellant in respect of the misdirections of the court *a quo*

²⁸ *Emphasis added*

²⁹ See, generally, *du toit* at 9-47 to 9-50

when refusing to grant the Appellant bail.³⁰ In light thereof, this Court is entitled to set such judgment aside and replace it with the judgment and order of its own.

[92] Furthermore, this court finds that the opposition by the Respondent to the Appellant being granted bail is not based on any real evidence. As set out by Adv Le Roux at the commencement of her address before this Court, that opposition is, by the very nature of the alleged offences and the role which the Respondent alleges the Appellant played therein, circumstantial in nature. Whilst this Court accepts that a court may refuse bail to an accused on the basis of evidence of a circumstantial nature, there must be some basis therefor which would provide that court with a foundation from which to draw the only reasonable inference that it would not be in the interests of justice for the accused to be released on bail.

[93] No such evidence has been placed before this Court on behalf of the Respondent. Not only are the contents of the answering and supplementary affidavits highly speculative in nature but there is a distinct lack of real facts contained therein. The conspicuous lack of confirmatory affidavits also does little to bolster the Respondent's case. All of the foregoing is "*underpinned*" by the judgment and order of Ledwaba DJP in the Pretoria High Court in respect of the Vereeniging matter.

[94] This Court has the utmost sympathy for the investigating teams who are tasked with investigating offences of the nature involved in the present matter. However, this cannot, in law, alleviate the necessity for the Respondent to place acceptable evidence before a court in rebuttal of an accused's application to be released from custody on bail.

[95] In the premises, this Court finds that the Appellant has proven, on a balance of probabilities, that exceptional circumstances exist to warrant his release on bail and that it would be in the interests of justice for him to be granted bail. The granting of bail to the Appellant must, of course, once again having proper regard to the facts of this matter, be subject to appropriate conditions. This judgment will not be burdened unnecessarily by dealing with the nature and purpose of the

³⁰ Paragraphs [46] to [71] *ibid*

conditions which this Court will impose. In the opinion of this Court, they are all reasonable and necessary.

ORDER

[96] This Court grants the following order:

1. The order granted in the Regional Court of Gauteng (held in Alexandra) under case number RC555-2025, whereby the Appellant's application for bail was dismissed, is set aside and is substituted with this order.
2. The Appellant is granted bail in the amount of R400 000.00. This amount is in addition to the bail granted by the High Court of South Africa, Gauteng Division (Pretoria) under case number A112-2025, in the sum of R100 000.00.
3. The Appellant is to report to the Morningside Police Station on Monday, Wednesday and Friday between the hours of 06h00 and 18h00.
4. The Appellant is restricted to the borders of the Gauteng Province, except insofar as paragraph 5 below is concerned.
5. The Appellant is permitted to travel to Welkom (Free State Province) for business purposes, after informing the investigating officer of his intent to do so, in writing.
6. The Appellant's passport shall remain in the possession of the Investigating Officer and the Appellant is not permitted to apply for any travel documents until the finalization of the trial.
7. The Appellant shall not interfere or communicate with any state witnesses referred to in the indictment, either directly, indirectly, or through third parties in any way.
8. The Appellant is to attend court as ordered on the last appearance and on the dates that the trial is postponed to.



BC WANLESS
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 2 October 2025

Date of *ex tempore* Judgment: 10 October 2025

Date of Written Judgment: 5 November 2025 (*delay in completion thereof was as a result of technical difficulties with the recording when the ex tempore judgment was delivered, resulting in a delay in having that judgment transcribed and revised*)

APPEARANCES

For the Appellant: **ADV HELLENS SC**
ADV DJ JOUBERT SC
Instructed by: **KRAUSE ATTORNEYS INC**

For the Respondent: **ADV EHF LE ROUX**
Instructed by: **THE DIRECTOR OF PUBLIC PROSECUTIONS**